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OFFICE OF PETITIONS

In re Patent No. 6,941,865

Kazunori Kato

Issue Date: September 13, 2005

Application No. 09/981,821

Filed: October 19, 2001

Attorney Docket No. 862.C2410

:
: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.702(2)," filed October 28, 2005. Patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred fifty six (356) days to four hundred seventy nine (479) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **GRANTED**.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of four hundred seventy-nine (**479**) days.

On September 13, 2005, the above-identified application matured into U.S. Patent No. 6,941,865. The instant request for reconsideration filed October 28, 2005 was timely filed within two months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 356 days. Patentee states that the patent term adjustment should not have been reduced by 120 days for the submission of a "Miscellaneous Incoming Paper" after the Notice of Allowance, as the only paper filed after the mailing of the Notice of Allowance was a "Request for Corrected Notice of Allowance".

Patentees' argument is well-taken. As stated in MPEP 2732, the submission of the following papers after a "Notice of Allowance" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application: (1) Fee(s) Transmittal (PTOL-85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the examiner's reasons for allowance or a request to correct an error or omission in the

"Notice of Allowance" or "Notice of Allowability;" and (7) letters related to government interests (e.g., those between NASA and the Office). A review of the application record reveals that the reduction of 120 days was based on the filing after allowance of a request for correction of an error in the Notice of Allowability filed August 30, 2004. Thus, it is concluded that the patent term adjustment should not have been reduced by 120 days.

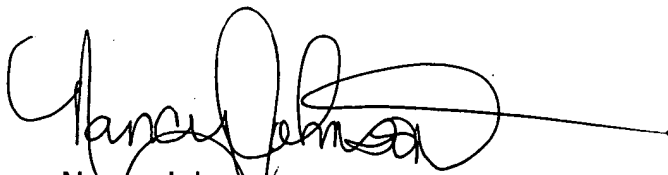
Patentee also disputes the reduction of three (3) days based on patentee's failure to file a response to the non-Final Office Action mailed September 30, 2003 within three months. The issue fee payment was received in the Office on August 30, 2004; however, no filing of an application for patent term adjustment preceded the payment of the issue fee. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended upon payment of the issue fee on August 30, 2004. As there is no dispute that an application for patent term adjustment disputing the three days which have been deducted as applicant delay, was not filed prior to the payment of the issue fee, the issue now raised is untimely and will not be reconsidered.

In view thereof, the patent term adjustment indicated on the patent should have been four hundred seventy-six **(476)** days.

The \$200.00 fee set forth in 37 CFR 1.18(e) has been applied. No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by four hundred seventy-six **(476)** days.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney, Patricia Faison-Ball at (571) 272-3212.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,941,865 B2

DATED : September 13, 2005

INVENTOR(S) : Kazunori Kato

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (356) days

Delete the phrase "by 356 days" and insert – by 476 days--